REVIEW OF MANITOBA'S FIRST AGREEMENT LEGISLATION

Manitoba
Labour
Research and
Planning

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Research & Planning
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1.0 INTRODUCTION

The purpose of this report is to provide a brief overview of the current status of first agreement cases brought before the Manitoba Labour Board.

First agreement legislation was initially enacted in Manitoba in 1982. The intent of the legislation is to encourage newly certified bargaining units and management to conclude their own first collective agreements. Where parties are not able to conclude agreements on their own, the legislation provides a forum for resolution of their disputes. First contract legislation is intended to overcome some of the difficulties that parties may encounter in establishing their initial collective bargaining relationships, thereby providing a foundation for harmonious labour relations.

Under the 1982 first agreement legislation, either party (management or union) could request the Minister of Labour to direct the Manitoba Labour Board to inquire into their negotiations. While not a requirement of the legislation, the Minister would normally refer cases to Conciliation Services if that process had not been used prior to the request.

Once the Labour Board received direction to inquire into the negotiations from the Minister, within 60 days the Board is obliged to either settle the provisions in dispute or instruct the parties to attempt a settlement within 30 days. If the parties are not able to effect a settlement within this time period, the Manitoba Labour Board proceeds to settle the matter within a further 30 days.

Under the original legislation, the Board has the power to order the termination of any strike or lockout that may be in place at the time of application. In addition, the employer is required to reinstate all employees. The Board also must accept any terms or conditions to which the parties have previously agreed in writing without amendment and has to give both parties an opportunity to present evidence and make representations. In setting out the provisions for the first agreement, the Board can a) take into account the extent to which the parties had or had not bargained in good faith b) consider any provisions in other collective agreements where the employees are performing similar work under similar circumstances or c) examine other matters that the Board considers to be fair and reasonable in arriving at the terms and conditions of a first agreement.

The legislation requires that the first agreement be set for a period of one year from the date on which the Board settles the terms and conditions of the contract.

With the implementation of Bill 22 on January 1, 1985, three revisions were made to the first agreement legislation. These are:

1. Applications are to be filed directly at the Manitoba Labour Board. This is consistent with the intent of Bill 22 to insulate the Manitoba Labour Board and the collective bargaining process from potential political intervention.

2. Parties are required to seek conciliation prior to filing an application for first agreement settlement.

3. The Board is no longer obliged to take into account bad faith bargaining when imposing a first agreement. The purpose of first contract provision is to ensure that a fair and reasonable agreement is concluded. The Act contains other remedies for bad faith bargaining.

2.0 STATISTICAL REVIEW OF FIRST AGREEMENT LEGISLATION

Since first agreement legislation was enacted in 1982, the Manitoba Labour Board has received 20 applications for first agreements and has imposed ten contracts. In five applications, the parties settled the first agreement voluntarily prior to the scheduled hearing. One other application was withdrawn by the parties and the Board refused one application. A further application is scheduled for a hearing and another application is waiting to be scheduled for a hearing. In one other case the Board has instructed the parties to attempt a settlement within 30 days.

From 1982 to the middle of 1985, the twenty applications received by the Manitoba Labour Board for first agreements represents 11.5% of the 174 certifications granted. The Board imposed ten agreements which was 5.7% of the certifications granted.

In the first year of the legislation, 1982, the Board received four applications for first agreement. In two of these cases the parties voluntarily, entered into a collective agreement. One other application was withdrawn and the Board has refused another. There were no agreements imposed by the Board. At the present time, three of the bargaining units have had certifications revoked. For the fourth application that was settled voluntarily, the parties were successful in concluding a second collective agreement by using conciliation and they are currently negotiating a third agreement with a conciliator.

For 1983, the Board received five applications for first agreements. In two cases the parties entered into a collective agreement voluntarily and the Board imposed three contracts. Of the two parties which settled voluntarily, one has concluded a second agreement. In the other voluntarily settlement, the parties have signed a memorandum of agreement just after the Board dismissed an application for decertification. Of the three imposed agreements, two cases have successfully concluded second agreements which are still in effect. In the other instance, the parties are in negotiation for a second agreement. However, the Board recently dismissed an application for decertification in July, 1985.

During 1984, the Labour Board received four applications and imposed three first agreements. In one instance the parties voluntarily entered into a collective agreement prior to hearing date. For all applications the first contracts are still in effect. In one case, the union applied to the Board for review and reconsideration of the imposed agreement. The Board declined to review the order. In another case, the parties are not in negotiation for a second agreement as there are no employees employed with the company.

For the first nine months of 1985, the Labour Board received seven applications and has recently imposed four first agreements. In one case, the union applied to the board for review and reconsideration of the imposed first agreement and in another two cases, the companies applied for review and reconsideration. In all three instances, the Board declined to review the imposed first agreements. There are currently three cases outstanding; one scheduled for hearing and one is waiting to be scheduled for hearing. In the other instances, the Board has requested the parties to attempt a settlement.

STATISTICAL REVIEW OF

FIRST AGREEMENT APPLICATIONS

TABLE 1
DISPOSITION OF FIRST AGREEMENT APPLICATIONS

Year of Application	Number of Applications	Awaiting Hearing	Board Request to Attempt Settlement	Settled Voluntarily By Parties	Withdrawn By Parties	Settled By Board	Refused By Board
1982	4			2	1		1
1983	5			2		3	
1984	4			1		3	
1985*	7	2	1			4	
TOTAL	20	2	1	5	1	10	1

* From January to September 23, 1985.

TABLE 2
RATIO OF FIRST AGREEMENT APPLICATIONS AND BOARD IMPOSED
FIRST AGREEMENTS TO THE NUMBER OF CERTIFICATIONS GRANTED
1982 - Mid - 1985

Year	Certificates Granted	Applications for First Agreement	Ratio of First Agreement Application/ Certifications	Board Imposed First Agreements	Ratio of Board Board Imposed Agreements/ Certifications
1982	41	4	9.8%	-	0.0%
1983	51	5	9.8%	3	5.9%
1984	58	4	6.9%	3	5.2%
1985*	24	7	29.2%	4	16.7%
Total	174	20	11.5%	10	5.7%

* From January to September 23, 1985.

TABLE 3
CURRENT STATUS OF FIRST AGREEMENT APPLICATIONS

Year of Application	Number of Applications	Current Status of Applications						
		Awaiting Hearing	Board Request to Attempt Settlement	Certifications Revoked	First Contract Still in Effect	Negotiating For Second Agreement	Second Agreement Concluded	Negotiating For Third Agreement
1982	4			3				1
1983	5					1	4	
1984	4				4			
1985*	7	2	1		4			
Total	20	2	1	3	8	1	4	1

* From January to September 23, 1985.

TABLE 4
CURRENT STATUS OF THOSE FIRST AGREEMENTS WHICH WERE IMPOSED BY THE MANITOBA LABOUR BOARD

Year of Application	Number of First Agreements Imposed	Current Status		
		First Agreement In Effect	Negotiating Second Agreement	Second Agreement Concluded
1982	0	0	0	0
1983	3		1	2
1984	3	3		
1985*	4	4		
TOTAL	10	7	1	2

* From January to September 23, 1985.

TABLE 5

REVIEW OF CASES - FIRST AGREEMENT LEGISLATION

Union	Employer	Date of Application	Outcome of Application	Current Status
1. Canadian Association of Industrial, Mechanical and Allied Workers	United Fibre Bond	July 8, 1982	Hearing held. Board refused Application.	Certification revoked August 25, 1982
2. Graphic Arts International Union, Local 516	Screen Print Ltd.	July 27, 1982	Parties voluntarily entered into a Collective Agreement. Expiry date: October 14, 1983	Certification revoked June 24, 1983
3. Manitoba Food & Commercial Workers, Local 832	Blackwood Beverages (Dauphin)	August 3, 1982	Application withdrawn May 1983	Certification revoked May 27, 1983
4. Manitoba Food & Commercial Workers, Local 832	Blackwood Beverages (Brandon)	December 29, 1982	Parties voluntarily entered into a Collective Agreement. Expiry date: February 23, 1984	Second Agreement concluded with Conciliation Services Expiry date: February 23, 1985. Parties are in negotiation for third agreement. Conciliation has been requested.
5. Canadian Union of Public Employees, Local 5143	Care-A-Lot Day Care Centre Ltd.	February 7, 1983	Board imposed first Collective Agreement. Expiry date: May 15, 1984	Second Agreement concluded with Conciliation Services Expiry date: May 15, 1986

TABLE 5 cont'd

Union	Employer	Date of Application	Outcome of Application	Current Status
6. Amalgamated Clothing and Textile Workers, Local 459	Freed and Freed/ Cambrian Clothing Ltd.	March 22, 1983	Parties voluntarily entered into a Collective Agreement. Expiry date: November 30, 1984	The Manitoba Labour Board has dismissed an application for decertification in June, 1985. Memorandum of Agreement has been signed for entire contract except dental plan. Expiry Date: December 14, 1987.
7. Canadian Paperworkers Union, Local 830	Instabox (Winnipeg) Ltd.	May 26, 1983	Board imposed first Collective Agreement. Expiry Date: July 20, 1984	Second Agreement concluded with Conciliation Services. Expiry Date: July 20, 1986
8. Manitoba Food & Commercial Workers, Local 832	The German Society of Winnipeg	November 4, 1983	Board imposed first Collective Agreement. Expiry Date: February 2, 1985	Parties are in negotiation for second agreement. The Manitoba Labour Board has dismissed an application for decertification in July, 1985.
9. International Union of Operating Engineers, Local 827	Winnipeg Regional Housing Authority	December 19, 1983	Parties voluntarily entered into a Collective Agreement. Expiry date: December 31, 1984	Second agreement concluded. Expiry Date: December 31, 1987.
10. United Brotherhood of Carpenters & Joiners of America, Local 343	Alpine Roofing and Building Contractors, Ltd.	May 22, 1984	Board imposed first Collective Agreement. Expiry Date: July 12, 1985	Parties are not in negotiation for second agreement as there are no employees employed under the company name of Alpine Roofing and Building Contractors Ltd.

TABLE 5 (cont'd)

Union	Employer	Date of Application	Outcome of Application	Current Status
11. United Food & Commercial Workers, Local 111	Premier West Peat Moss Limited	July 31, 1984	Board imposed first Collective Agreement. Expiry Date: September 26, 1985	First Contract still in effect.
12. Manitoba Food & Commercial Workers, Local 832	R.M.K. Enterprises Operating name: Budget Rent-A-Car	September 26, 1984	Parties voluntarily entered into a Collective Agreement. Expiry Date: October 31, 1986	First Contract still in effect.
13. United Food & Commercial Workers, Local 111	Supreme Racquet Courts	October 25, 1984	Board imposed first Collectve Agreement. Expiry Date: December 20, 1985	First Contract still in effect. (January, 1985, the union applied to the Board for review and reconsideration of imposed first agreement. In April, 1985 the Board declined to review the imposed first agreement).
14. Graphic Communications International Union, Local 516	R.L. Polk & Co. Ltd. Operating Name: HENDERSON DIRECTORIES	March 14, 1985	Board imposed first Collective Agreement. Expiry Date: May 9, 1986	First Contract still in effect.
15. Manitoba Food & Commercial Workers Union, Local 832	The T. Eaton Company Limited (Brandon)	May 22, 1985	Board imposed first Collective Agreement. Expiry Date: July 23, 1986	First Contract still in effect. July, 1985 the company applied to the Board for review and reconsideration of imposed first agreement. In August, 1985, the Board declined to review the imposed first agreement.

TABLE 5 cont'd

Union	Employer	Date of Application	Outcome of Application	Current Status
16. United Food & Commercial Workers International Union, Local 516	Amesco (1967) Ltd.	May 23, 1985	Board imposed first Collective Agreement. Expiry Date: July 23, 1986	First Contract still in effect. In August, 1985, the company applied to the Board for review and reconsideration of the imposed first agreement. In September, 1985 the Board declined to review the imposed first agreement.
17. United Food & Commercial Workers International Union, Local 111	Smitty's - Your Family Restaurant	May 27, 1985	Board imposed first Collective Agreement. Expiry Date: July 26, 1986	First Contract still in effect. In August, 1985 the union applied to the Board for review and reconsideration. In September, 1985 the Board declined to review the imposed first agreement.
18. Manitoba Food & Commercial Workers Union, Local 832	Metropolitan Stores (MTS Ltd.))	July 2, 1985		In August, 1985 the Board requested the parties to attempt settlement with 30 days. The 30 days expires on September 25, 1985.
19. Graphics Communications International Union	Image Graphics	August 23, 1985		Hearing scheduled for October 1 and 2 (if necessary)
20. The Hotel and Restaurant Employees and Bartenders international	Charleswood Legion, Branch #100	September 20, 1985		Application is being processed. Hearings to be scheduled.

APPENDIX

FIRST AGREEMENT LEGISLATION AS OF JANUARY, 1985

WITH CHANGES IMPLEMENTED THROUGH BILL 22

Dispute re first agreement.

75.1(1) Where

(a) an employer or bargaining agent for a unit is required, by notice given under section 51 after the coming into force of this section, to commence collective bargaining with a view to the conclusion of a first collective agreement between the employer and the bargaining agent in respect of the unit;

(b) a conciliation officer has been appointed under subsection 59(1) to confer with the bargaining agent and the employer;

(c) a period of 90 days after the certification of the bargaining agent, and any period of extension that may be ordered in respect of the bargaining agent and the employer under subsection 10(3), have expired; and

(d) the bargaining agent and the employer have not concluded a first collective agreement;

the bargaining agent or the employer may apply in writing to the board to settle the provisions of a first collective agreement between the parties.

En. S.M. 1984, c. 21, s. 37.

Board to settle agreement.

75.1(2) Where a bargaining agent or an employer makes an application under subsection (1), the board shall

(a) notify the other party that the application has been made;

(b) inquire into the negotiations between the parties; and

(c) proceed to settle the provisions of a first collective agreement between the parties.

En. S.M. 1984, c. 21, s. 37.

Time limit for board.

75.1(3) Where an application is made under subsection (1), unless the parties conclude a first collective agreement within 60 days after the date of the application, the board shall, within a further 3 days,

(a) settle the provisions of a first collective agreement between the parties; or

(b) notify the parties in writing that, in the opinion of the board, the parties might, either through their own endeavours or with the assistance of the conciliation officer, conclude a first collective agreement within 30 days after the date of the notice under this clause, and that therefore the board declines to settle the provisions of a first collective agreement between the parties.

En. S.M. 1984, c. 21, s. 37.

Failure of parties to conclude agreement.

75.1(4) Where the board sends a notice to the parties under clause (3)(b) and the parties fail to conclude a first collective agreement within the 30 day period referred to therein, the board shall, within a further 30 days, settle the provisions of a first collective agreement between the parties.

En. S.M. 1984, c. 21, s. 37.

Termination of strike or lockout.

75.1(5) Where an application under subsection (1) is made during a strike by, or a lockout of, employees in the unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lockout, and the employer shall reinstate the employees in the unit in the employment they had at the time the strike or lockout commenced

(a) in accordance with any agreement between the employer and the bargaining agent respecting reinstatement of the employees in the unit; or

(b) where no agreement respecting reinstatement of the employees in the unit is reached between the employer and the bargaining agent, on the basis of the seniority standing of each employee in relation to the seniority of the other employees in the unit employed at the time the strike or lockout commenced, except as may be directed by an order of the board made for the sole purpose of allowing the employer at a totally shut-down workplace to resume normal operations in stages.

En. S.M. 1984, c. 21, s. 37.

Procedure for settling agreement.

75.1(6) In settling the provisions of a first collective agreement under this section, the board shall accept, without amendment, any provisions agreed upon in writing by the parties and shall give the parties an opportunity to present evidence and make representations, and the board may take into account

(a) the terms and conditions of employment, if any, negotiated through collective bargaining for employees performing the same or similar functions in the same or similar circumstances as the employees in the unit; and

(b) such other matters as the board considers will assist it in arriving at provisions of a first collective agreement between the parties which are fair and reasonable in the circumstances.

En. S.M. 1984, c. 21, s. 37.

Term of first agreement.

75.1(7) Where the board settles the provisions of a first collective agreement under this section, the collective agreement shall be effective for a period one year from the date on which the board settles the provisions thereof, and the collective agreement shall be binding on the parties and on the employees in the unit as though it were a collective agreement voluntarily entered into between the parties, except to the extent that any of its provisions may be amended by the parties by subsequent agreement in writing.

En. S.M. 1984, c. 21, s. 37.

Agreement in writing.

75.1(8) The board shall commit to writing every collective agreement the provisions of which it settles under this section, and section 65, with necessary modifications, applies to the collective agreement.

En. S.M. 1984, c. 21, s. 37.